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MINUTES
ESHB 1397 RULE ADVISORY COMMITTEE
June 14, 2005

Introductions: Sarah Rees, the Program Development Section Supervisor for Ecology's Air Quality Program opened the meeting and invited attendees to introduce themselves. Advisory Committee members in attendance included: Bob Saunders, Ron Shultz, William Wright, Thalia Brown, Chris Marr, Carrie Nyssen, John Cabaniss, Dave Kircher, Dale Brown, Steve Douglas, Janet Ray, Bryan Imai, Vicki Fabre, and Bob Bridge. Additional attendees included James McMahan, Richard Roger, Nancee Wildermuth, John Raymond and Brett Rude.

Absent: Theresa Gamble, K.C. Golden, Kathryn Vasquez, John Creedon and Robert Pregulman.

Review ESHB 1397: Ron Shutz led the committee through a review of ESHB 1397. Discussion followed. See issues and concerns covered below.

Overview of rule making process: Sarah explained the roles of Ecology staff and turned the meeting over to Bob Saunders as Ecology's lead on this rule-making effort.

Bob expressed that while this rule-making was an Ecology effort, the Department of Licensing (DOL) may need to revise their rules also in order to implement/enforce the vehicle registration element of the statute.

Regarding rule development, Bob told the committee that Ecology expects to consider and pattern this rule after approaches taken by other opt-in states, rather than building the rule from scratch. For example, Ecology's rule may resemble portions of both Rhode Island and Connecticut's rules – a hybrid of sorts.

In terms of the decision making process, Bob explained that the advisory committee would strive for the highest level of consensus. In the absence of full consensus, Ecology staff will make recommendations to Ecology management along with alternative and dissenting positions. In the end, Ecology management is responsible for final decisions.

Bob led the committee through a milestones and timeline handout – highlighting the goal to complete rulemaking by December 31, 2005. Rulemaking in terms of adopting the standards must be completed by December 31, 2005 in order to provide manufacturers with two years advance notice of a 2009 model year implementation. To meet this schedule, rulemaking for implementation may extend beyond December 31, 2005.

The advisory committee scheduled the following advisory committee meetings:

July 21, 2005
August 16, 2005
September 13, 2005

Meetings will be held at SeaTac, tentatively, or Seattle from 9:30 AM to 2:30 PM

Review a rule from a northeastern state: Bob Saunders led the committee through a review of Rhode Island's and Connecticut's Low Emissions Vehicle Program rules.

Discussion followed. The committee discussed and Ecology agreed to consider an implementation "grace period" for meeting fleet average requirements. For the first few years, manufacturers would report on deliveries. After that time they would report on complying with the average.

Identify issues and concerns: Bob Saunders opened the meeting to identifying issues and concerns – several of which rose to the top for considerable discussion.

Issue 1: Should WA move forward with rulemaking before its clear what approach Oregon will be taking?

Discussion: Some members thought Ecology should not be adopting a rule ahead of Oregon's decision. Their position is that ESHB 1397 implies that the legislature thought Oregon and Washington should proceed together. From this position they suggested Ecology's present effort may be a waste of time given uncertainties in Oregon.

Ecology's position is that the legislature has adopted the California standards, and by effect of the emergency clause in ESHB 1397, the adoption of the standards takes effect immediately.

Ecology also believes the intent of the Governor and the legislature is to move forward expeditiously on the basis that the Governor of Oregon has clearly indicated the intent to adopt the California standards. Ecology acknowledges the uncertainties about Oregon's action, and timing but believes it is a valid option to put the rules in place so that there are no delays.

Under HB 1397, Washington's rule will be effective ... "only for those model years for which the state of Oregon has adopted the California motor vehicle emission standards." This means that the Washington requirements for CA certified vehicles will be adjusted to go into effect at the same time as the Oregon requirements.

Issue 2: Can WA adopt the Pavley provisions?

Discussion: Some committee members pointed out that the statute adopts the California standards as of January 1, 2005 and that the California standards at that time did not include Pavley. In particular, they believe section 177 clearly precludes Ecology from adopting the Pavley provisions prior to EPA issuing California a waiver. They believe that Ecology should not at this time move forward with including the Pavley provisions in rule making.

Ecology points to specific language in ESHB 1397 that requires Washington to "...amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards..." Ecology also believes a great deal of the legislative debate was about the effects of Pavley and this clearly indicates their intent to include it.

For these reason, Ecology believes it is a valid approach to put the rules in place so that there are no delays. Ecology acknowledged the question about the waiver and expects to further investigate the issue.

Issue 3: Compliance.

The committee identified and discussed two broad areas regarding compliance, a) inspection of dealers (new and used) and b) vehicle registration procedures.

The committee reviewed the Dealer Surveillance and Inspection provisions of Rhode Island's rule which provides for dealer inspection, reporting and even testing. Some committee members questioned the need for such provisions suggesting instead that vehicle registration would provide sufficient means for monitoring and enforcing compliance.

The committee spent considerable time discussing methods by which to determine whether a vehicle with less than 7,500 not previously registered in Washington was a compliant vehicle. The committee identified the need to inspect under hoods and considered the following possible approaches: Department of Licensing offices, subagents, dealers, the state patrol, and possible fees associated with inspections.

Additional concerns:

- a. dealers certifying California status without further documentation
- b. price differentials will drive attempts of evasion. For example, a \$1,000 price differential may not be enough incentive to pursue wholesale loopholes whereas a \$3000 differential may.
- c. dealers are able to sell federal cars to out of state residents, dealer inspections will be inconclusive and not be able to detect fraud.
- d. low-mileage used vehicles from out of state are likely to present the greatest challenge.

Other issues briefly discussed:

Issue 4: Rental vehicle companies. How will the statute language re: "for use in the state" impact rental agencies and generally how will rental companies be treated in the regulation?

Issue 5: Vehicle testing and certification. Will Washington reference these California procedures in the same way Rhode Island and some other states have?

Issue 6: Recall provisions. – Will Washington allow for some variation if there is a recall for something on a Northeast vehicle that is not a concern in Washington?

Issue 7: California Warranty provisions. – Will California warranty provisions apply to vehicles sold "for use out of state" or just to vehicles sold "for use in the state"?

Issue 8: Adopting extended warranty provisions. Do the extended 15 year, 150,000 mile California warranties apply to Washington vehicles since the bill prohibits the ZEV program? Response: The 150,000 mile PZEV warranty is defined and contained in the ZEV part of the CA regulations. Consequently, ECY regulations adopting the CA emission standards will not require vehicles with those warranties to be sold in WA. Manufacturers and dealers will not be prohibited from offering this warranty as an incentive.

NOTE: Ecology staff will maintain a list of issues raised during the advisory committee process, and will attempt to answer the questions in a timely manner so that the advisory committee can consider the responses.